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No. 80-1663

In the Supreme Court of the United States

OCTOBER TERM, 1980

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL., PETITIONERS

v.

ALLIED INTERNATIONAL, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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INTEREST OF THE UNITED STATES

This case involves the application of the prohibition on secondary boycotts in Section 8(b)(4) of the National Labor Relations Act, 29 U.S.C. 158(b)(4), to work stoppages called by the International Longshoremen's Association (ILA) as a protest against the Soviet Union's invasion of Afghanistan. The National Labor Relations Board is responsible for implementing the provisions of the NLRA, and there are currently pending before the Board three cases involving issues substantially identical to the ones presented in this case.[1]

[1]Respondent is the charging party in one of these cases, *Int'l Longshoremen's Ass'n (Allied Int'l, Inc.)*, Case Nos. 1-CC-1753, JD-100-81 (Mar. 16, 1981). See Pet. App. B. The other cases are *Int'l Longshoremen's Ass'n (Occidential Chemical Co.)*, Case Nos. 10-CC-1141-1 *et seq.*, JD-98-81 (Mar. 16, 1981), and *Int'l Longshoremen's Ass'n (Kansas Farm Bureau, et al.)*, Case Nos. 23-CC-764-1 *et seq.*, JD-99-81 (Mar. 16, 1981).

1. On March 31, 1980, respondent Allied International sued petitioners under Section 303 of the Labor-Management Relations Act, 29 U.S.C. 187, in the United States District Court for the District of Massachusetts, seeking injunctive relief and damages (Pet. App. 4a and 101a). It alleged that petitioners violated the prohibition on secondary boycotts in Section 8(b)(4) of the National Labor Relations Act, 29 U.S.C. 158(b)(4), by refusing to handle cargo bound to or from the Soviet Union (*ibid.*).[2] The district court dismissed Allied's complaint on the basis of its decision in a consolidated case, *Walsh* v. *Int'l Longshoremen's Ass'n*, 488 F. Supp. 524 (D. Mass. 1980), in which it had held that the refusal of union members "to accept employment on certain ships, as a form of political protest," was "a primary boycott of Russian goods, with incidental effects upon those employers who deal in such goods," and thus that it did not constitute an unlawful secondary boycott (*id.* at 530-531).[3]

The court of appeals in *Walsh* did not reach the merits, for it gave res judicata effect to the denial of the request of another Regional Director of the NLRB for a temporary injunction against the ILA's work stoppage in Texas (see *Baldovin* v. *Int'l Longshoremen's Ass'n*, 626 F. 2d 445 (5th Cir. 1980)), and remanded the district court's decision with directions to vacate and dismiss (*Walsh* v. *Int'l Longshoremen's Ass'n*, 630 F. 2d 864, 875 (1st Cir. 1980).

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[2]Respondent also alleged that petitioners violated the Sherman Act, 15 U.S.C. 1, and tortiously interfered with its contractual relationships (Pet. App. 4a). The court of appeals affirmed dismissal of these claims (Pet. App. 24a-29a). Respondent has filed a cross-petition for a writ of certiorari. *Allied Int'l Inc.* v. *Int'l Longshoremen's Ass'n* No. 80-1906 (filed May 5, 1981).

[3]*Walsh* was a suit by a Regional Director of the National Labor Relations Board for a preliminary injunction, pending Board adjudication of respondent's unfair labor practice charge against the ILA under Section 8(b)(4). See note 1, *supra*.

Because the instant case involved a stranger to the *Baldovin* litigation, however, the court of appeals here reached the merits of respondent's claim and concluded, contrary to the district court, that the ILA's refusal to handle Soviet cargo was a secondary boycott prohibited by Section 8(b)(4) of the NLRA (Pet. App. 24a).

2. Section 8(b)(4) reaches conduct that affects "any person engaged in commerce or in an industry affecting commerce." This Court's decisions have interpreted the "in commerce" requirement in Section 8(b)(4) or other sections of the Act containing similar language as precluding the application of the National Labor Relations Act in a variety of situations in which the dispute involved foreign ships.[4] Petitioners contend that, under those decisions, their work stoppage was not "in commerce" within the meaning of Section 8(b)(4). Although the Fifth Circuit in *Baldovin, supra*, agreed with this analysis, the court below did not.[5] This case thus presents a clear conflict among the circuits on an important issue concerning the scope of the NLRA and the interpretation of this Court's prior decisions. It is accordingly an appropriate case for plenary review by this Court.

3. This case, like *Jacksonville Bulk Terminals, Inc.* v. *ILA*, cert. granted, No. 80-1045 (Mar. 30, 1981), involves the application of the federal labor laws to this ILA's refusal to handle cargo bound for or shipped from the Soviet Union. We submit that the Court should grant the petition

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[4] *American Radio Ass'n* v. *Mobile Steamship Ass'n*, 419 U.S. 215 (1974); *Windward Shipping (London) Ltd.* v. *American Radio Ass'n*, 415 U.S. 104 (1974); *Incres Steamship Co.* v. *Int'l Maritme Workers Union*, 372 U.S. 24 (1963); *Benz* v. *Campania Naviera Hidalgo*, 353 U.S. 138 (1951). Cf. *Int'l Longshoremen's Ass'n, Local 1416* v. *Ariadne Shipping Co.*, 397 U.S. 195 (1970).

[5] Both circuits agreed that the union's work stoppage otherwise violated the secondary boycott provision (see Pet. App. 8a-24a and *Baldovin, supra*, 626 F. 2d at 449).

for certiorari in this case, and either consolidate it for argument with *Jacksonville* or set the two cases for argument in tandem. The legal issues involved in the two cases, although different, are related. The question presented in *Jacksonville*—whether the ILA's activitiees are a "labor dispute" for purposes of the Norris LaGuardia Act, 29 U.S.C. 104, is similar to the question presented in this case—whether the same activities are "in commerce" and, if so, in violation of Section 8(b)(4) of the NLRA.[6] Moreover, the legal context of each case is usefully amplified by consideration of the other, so that the Court is presented with the full legal implications of the ILA's actions.

The NLRB is presently considering three cases involving issues substantially identical to those raised in this petition (see note 1, *supra*). We will be able to file a brief expressing the views of the United States on the merits of the issues involved in this case once the Board has formulated its position in deciding the cases pending before it. The Board expects to reach its decisions within the next several months, and we would then be able to discuss the issues fully at the merits stage of this case.

Although setting *Jacksonville* for argument with this case might result in some delay in the disposition of that case, we do not believe that the delay would be prejudicial to the parties, since we note that on April 24, 1981, the ILA directed its members to resume normal handling of the Soviet cargos.[7]

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[6]This Court has suggested that the scope of the two statutes may not be identical in this context. *Marine Cooks & Stewards, AFL* v. *Panama Steamship Co.*, 363 U.S. 365, 372 (1960); *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 18 (1963).

[7]This voluntary cessation of the challenged conduct does not moot these cases. *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 632 (1953); *United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290, 308-310 (1897); *United States* v. *Phosphate Export Ass'n*, 393 U.S. 199, 202-203 (1968). Cf. *DeFunis* v. *Odegaard*, 416 U.S. 312, 318 (1974).

It is therefore respectfully submitted that the petition for a writ of certiorari should be granted, and that this case should be set for argument with *Jacksonville Bulk Terminals, Inc.* v. *ILA*, No. 80-1045.

WADE H. MCCREE, JR.
Solicitor General

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